

# Exhibit A

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW YORK

3                   -       -       -

4       ERIC FISHON, ALICIA PEARLMAN AND       :  
5       PATRICK YANG, individually and on       :  
6       behalf of all others similarly       :  
7       situated,       :  
8                   Plaintiffs,       : CASE NO.  
9                   vs.       : 1:19-CV-11711  
10       PELOTON INTERACTIVE, INC.,       :  
11       Defendant.       :

12                   -       -       -

13                   September 16, 2020

14                   -       -       -

15  
16                   Remote videotaped deposition of  
17       MEAGAN SULLIVAN was taken pursuant to notice,  
18       beginning at 12:20 p.m. Eastern Time, on the  
19       above date before Gail L. Inghram Verbano,  
20       Registered Diplomate Reporter, Certified  
21       Realtime Reporter, Certified Shorthand  
22       Reporter-CA (No. 8635) and Notary Public, there  
23       being present via videoconferencing:  
24

                 -       -       -

1 A P P E A R A N C E S:

2 On behalf of Plaintiffs:

AARON ZIGLER, ESQ.

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6 On behalf of Defendants:

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11 ALSO PRESENT:

12 KEN AMRHEIN, Legal Technician

1 five years?

2 A. No.

3 Q. Okay. So did you do anything to  
4 prepare for today's deposition, other than that  
5 short conversation with counsel a few weeks ago?

6 A. To prepare, no.

7 Q. Yeah. Did you review any  
8 documents or anything like that?

9 A. No.

10 Q. Okay. And you're here today  
11 pursuant to a deposition subpoena; correct?

12 A. Correct.

13 Q. Okay. Let's just do some quick  
14 background.

15 What's your birthdate?

16 A. [REDACTED]/87.

17 Q. And where do you live?

18 A. New York.

19 Q. Where in New York?

20 A. West Babylon, New York.

21 Q. Okay. And what do you do for a  
22 living?

23 A. I'm a nurse practitioner.

24 Q. Okay. And where do you work?

1           A.       I work in a hospital, and I work  
2       in an office.

3                       (Whereupon, Sullivan Exhibit 1  
4       marked for identification.)

5       BY MR. FELDMAN:

6           Q.       Okay. Great.

7                       I'm just going to throw up for a  
8       second Tab 5, which is a LinkedIn profile for  
9       you, I believe. I just want to ask you if it  
10      looks accurate, if it is accurate.

11          A.       Yeah.

12          Q.       Is this accurate?

13          A.       That's me.

14          Q.       And if you -- and scrolling down,  
15      you can see -- does it accurately reflect your  
16      prior positions?

17          A.       It might not be completely  
18      updated, but -- yeah, sure, yeah.

19          Q.       Okay, great.

20          A.       It's not 100 percent updated.

21          Q.       Okay, great. But -- but accurate  
22      as far as what we see?

23          A.       Yes, that's me.

24          Q.       Okay. All right. We can take

1           A.           When I was already interested in  
2           the bike, doing my own research about the bike.

3           Q.           And you were aware, correct, that  
4           there is a secondary market for buying Peloton  
5           used bikes on eBay and craigslist and other  
6           things; correct?

7           A.           Was I aware?

8           Q.           Yes.

9           A.           No; I didn't know if you could  
10          even sell the -- I didn't know that you could  
11          sell the bike.

12          Q.           Okay. And how did you determine  
13          that -- that you would be able to buy the bike  
14          from your uncle and then get it to work for you?

15          A.           I figured if I had my own user  
16          name and password and was paying monthly for the  
17          subscription, that it wouldn't matter. It's  
18          my -- I'm paying per month for the -- for the  
19          class, for the gym. I don't -- you know, no one  
20          is paying for it for me. I'm not using someone  
21          else's name. I'm using my own name, my own  
22          account, and that's what I did.

23                       And I eventually canceled or --  
24          the subscription that I used on my, you know,

1 iPhone or my tablet, I said, I don't need this  
2 anymore. And I joined around July 10th-ish or  
3 13th-ish of '17 and -- for the bike.

4 Q. Sitting here today, are you aware  
5 that you can sell a Peloton bike on craigslist  
6 and eBay and other places?

7 MR. ZIGLER: Objection; assumes  
8 facts.

9 You can answer the question if  
10 you know, Meagan.

11 THE WITNESS: I'm -- I don't --  
12 am I aware that I could, like, sell my  
13 bike?

14 BY MR. FELDMAN:

15 Q. Sure. Yes.

16 A. I don't know. Can I?

17 Q. You've -- yes.

18 A. Okay.

19 Q. You -- you have sold other goods  
20 on third-party marketplaces like Letsgo [sic],  
21 haven't you?

22 A. Have I?

23 Q. Yes.

24 A. You'd have to show me records.

1 Q. Have you ever sold anything on  
2 craigslist or eBay or any other site like that?

3 A. I've sold a kitchen table  
4 recently on Letgo.

5 Q. Okay. So you're aware that you  
6 can sell items on a third-party marketplace like  
7 Letgo; right?

8 A. Yes. But what items?

9 Q. Okay. Have you ever considered  
10 selling your Peloton bike?

11 A. No.

12 Q. Why not?

13 A. I don't really have a reason.

14 Q. You want to keep it; correct?

15 A. I mean, I don't have a reason to  
16 not -- you know, to get rid of it right now.

17 Q. And why -- why is that? Because  
18 you -- you still continue to enjoy using it;  
19 correct?

20 A. With -- if and when I have time  
21 to use it, I have it to use.

22 Q. Okay. And you enjoy using it  
23 when you have that time to use it; correct?

24 A. I mean, yeah, sure. I -- I enjoy



1 it.

2 Q. Okay. So have you ever visited  
3 any website maintained by Peloton about how to  
4 buy a used Peloton bike or how to sell a used  
5 Peloton bike?

6 A. No.

7 (Whereupon, Sullivan Exhibit 2  
8 marked for identification.)

9 BY MR. FELDMAN:

10 Q. Just, for example, I'll put up  
11 Tab 6 for a second. This is a web page on the  
12 Peloton website on the support site; and the  
13 title of it, as you can see once it pops up, is  
14 "Buying a used Peloton bike." And there's a  
15 heading of "Where Can I Buy a Peloton Bike?"  
16 And you can see there it explains, "Local online  
17 marketplace."

18 Do you see that, "craigslist,  
19 Facebook marketplace, Letgo"?

20 Do you see that?

21 MR. ZIGLER: Hold on. Steve, I'm  
22 going to put on an objection here to the  
23 lack of foundation. You haven't laid  
24 any foundation for when this was

1 MR. ZIGLER: Objection --

2 THE WITNESS: -- to me that her  
3 class is not there anymore. I cannot go  
4 anymore on that memorable day or  
5 experience. I cannot see -- I don't  
6 want to, like, see myself. I don't even  
7 like doing the Zoom.

8 But I don't -- I cannot watch the  
9 Peloton class, do the Peloton class, the  
10 memory of my friends, of us all being  
11 there together, it's -- it's not there  
12 anymore; and that bothers me.

13 BY MR. FELDMAN:

14 Q. I see.

15 So one of the reasons why you're  
16 upset and you've brought the suit against  
17 Peloton is that the Jennifer Jacobs classes have  
18 been taken down and including the one that you  
19 actually were at with your friends that day,  
20 where you met Jennifer Jacobs; is that correct?

21 MR. ZIGLER: Objection as it  
22 misstates prior testimony and it also  
23 misstates the facts in --

24 MR. FELDMAN: Aaron, hey, we're

1           going to -- we're going to have a  
2           problem and have to call the judge,  
3           because I'm not going to allow speaking  
4           objections like this over and over  
5           again. You can say "objection" and  
6           that's it.

7                   MR. ZIGLER: All right. So --

8                   MR. FELDMAN: Go ahead.

9                   MR. ZIGLER: -- you said that  
10           Ms. Sullivan brought this suit against  
11           Peloton. She's an absent class member  
12           here. She hasn't brought anything  
13           against Peloton, but --

14                   MR. FELDMAN: Well, she actually  
15           brought an arbitration against Peloton,  
16           but that's -- but we -- we can talk  
17           about that later.

18                   MR. ZIGLER: Or -- can I --

19                   MR. FELDMAN: I don't want to  
20           argue with you, Aaron.

21 BY MR. FELDMAN:

22           Q.       Ms. Sullivan, I'm just asking you  
23           a very simple question. One of the reasons --  
24           let me ask you this, Ms. Sullivan:

1 Are you planning to be a class  
2 member in the class action asserted against  
3 Peloton that we're here for today?

4 MR. ZIGLER: Objection; calls for  
5 speculation. It may invade the  
6 attorney-client privilege. I don't  
7 know. Probably a couple of others.

8 Go ahead, you can answer the  
9 question if you'd like.

10 THE WITNESS: I'm here as a  
11 witness. I'm here as a person. I don't  
12 have to be here. No one is paying me to  
13 be here. I don't -- you know, it's --

14 BY MR. FELDMAN:

15 Q. Okay. One of the reasons you're  
16 upset with Peloton is that the class that you  
17 took with your friends has been taken down;  
18 correct?

19 A. I'm not upset. I'm not losing  
20 sleep over it. It was just something that was  
21 sentimental to me as a human being that I'm just  
22 using as an example that it's -- doesn't -- it's  
23 not the end all, be all, you know, reason. It's  
24 just one of the reasons. I'm giving you an

1 (Simultaneous cross-talk.)

2 -- why did you ultimately only  
3 take four Jennifer Jacobs classes ever?

4 A. I don't really have a good reason  
5 for you, Steve. I actually liked -- there's  
6 other coaches that I like better.

7 Q. Okay. And isn't it true that  
8 aside from the May 26th, 2017, Jen Jacobs  
9 class, which you took more than once, the one  
10 you were at, you never actually took any other  
11 class twice on the Peloton service?

12 A. I'm not sure. I mean --

13 Q. Well, I can show you the records.

14 A. I could show you the records,  
15 too.

16 Q. Is it fair to say that you do not  
17 as a practice retake Peloton classes?

18 A. I retake the same instructors.

19 Q. With new classes, the same  
20 instructor with their new classes; correct?

21 A. I take classes that have similar  
22 music and similar instructors.

23 Q. Right. But new classes with  
24 similar instructors and similar music. You do

1 not retake the same classes over and over again;  
2 correct?

3 A. Whether I have doesn't mean that  
4 I won't.

5 Q. Okay. But you haven't to date  
6 been taking --

7 A. I don't think so. You would --  
8 we have to go through all of --you know, my  
9 classes, we'd have to go through them together.

10 Q. I have. And we can pull them up.  
11 But the fact is, you -- does it surprise you --  
12 I mean, you're the one who has taken these  
13 classes.

14 Would you -- does it sound  
15 correct that you consistently take new classes?  
16 You might have the same instructors that you  
17 like to keep going back to or the same music  
18 style. But you do not retake classes, as a  
19 practice? You consistently take new classes  
20 that are available on the Peloton service;  
21 correct?

22 MR. ZIGLER: Objection to form.

23 THE WITNESS: I take classes that  
24 I want to take that I think seem okay to

1 me. There have been times where there  
2 are classes that the first two minutes  
3 they're horrible. What do I do? I shut  
4 them off and I look for another class.

5 BY MR. FELDMAN:

6 Q. Can you identify any specific ad  
7 you ever saw from Peloton that used the term  
8 "ever-growing"?

9 A. You've asked me this. Without  
10 using the word "ever-growing" and I have seen  
11 multiple ads on TV that I cannot tell you deep,  
12 fine details. But one thing that I could tell  
13 you is, one of the reasons that not just me,  
14 other people have most likely bought this bike  
15 is because Peloton said "ever-growing library."

16 Never said they were deleting  
17 classes, getting rid of classes, whether it's  
18 Jennifer Jacobs, whether it's the new treadmill  
19 program -- nothing. They never said they were  
20 taking away classes.

21 Q. Okay. Just please focus on my  
22 question.

23 A. I am focusing on your question.

24 Q. Have you ever seen a specific

1           A.           I don't know. Maybe, I think I  
2           read something about maybe, like -- no, I don't.  
3           I know -- I know that there was about 50 percent  
4           removed but I couldn't tell you how many were --  
5           were there.

6           Q.           Okay. And you don't have an  
7           understanding of how many were there at the end  
8           of 2019?

9           A.           No, I'm sorry.

10          Q.           What do you want to get out of  
11          being a class member in this litigation?

12                   MR. ZIGLER: Objection; lack of  
13                   foundation. Assumes facts.

14                   Go ahead.

15                   THE WITNESS: I never said I  
16                   wanted to get anything.

17          BY MR. FELDMAN:

18          Q.           Okay. So you don't want to --  
19          why are you -- why are you a class member of  
20          this litigation if you don't want to get  
21          anything?

22                   MR. ZIGLER: Objection; calls for  
23                   a legal conclusion, assumes facts.

24                   THE WITNESS: Why are you



1 not an EDM ride. The Jess King was not an EDM.  
2 And there was a Cody Rigsby ride that -- but,  
3 you know, I can't -- I'm just using that as an  
4 example. They're -- they're not there anymore.

5 Q. When you agreed -- when you  
6 signed up for the Peloton service and bought  
7 your Peloton bike, you agreed to the terms of  
8 service; correct?

9 MR. ZIGLER: Objection to the  
10 extent it calls for a legal conclusion.

11 THE WITNESS: I'm sorry. It's  
12 windy. Can you repeat that. I'm sorry.

13 BY MR. FELDMAN:

14 Q. When you signed up for the  
15 Peloton service when you bought your Peloton  
16 bike, you scrolled down and you clicked "agree  
17 to the terms of service" before you could use  
18 your bike; right?

19 MR. ZIGLER: Same objection.

20 THE WITNESS: I clicked a lot of  
21 buttons so I probably clicked something.  
22 But I -- I'm not 100 percent sure.

23 BY MR. FELDMAN:

24 Q. Okay. Any reason to doubt that

1       you agreed to Peloton's terms of service before  
2       they let you use the product?

3                   MR. ZIGLER:  Objection to the  
4                   extent it calls for a legal conclusion,  
5                   vague.

6                   Go ahead.

7                   THE WITNESS:  I lost my train of  
8                   thought.  I'm sorry to everybody.

9       BY MR. FELDMAN:

10           Q.       You agreed to the terms of  
11       service for Peloton; correct?

12           A.       Maybe.  Maybe I did.

13                   MR. ZIGLER:  Objection to the  
14                   extent that it calls for a legal  
15                   conclusion.

16                   Go ahead.

17       BY MR. FELDMAN:

18           Q.       Okay.  I'll represent to you that  
19       if you didn't, it wouldn't let you use the  
20       Peloton service.

21                   Does that refresh your  
22       recollection as to whether you agreed to the  
23       terms of service?

24           A.       Most products, if you buy

1 something, it will have you -- right, have some  
2 terms of agreement, I would -- I would think so.

3 I don't remember when and what I  
4 clicked, is what I'm saying to you.

5 Q. Okay.

6 A. As far as --

7 Q. Is there any amount -- go ahead,  
8 finish.

9 A. No, no. As far as terms of  
10 agreement, I don't -- I don't know. Like, you'd  
11 have to let me see it or -- I don't remember  
12 exactly, like, what I -- what I may have read or  
13 didn't. It was probably a long time ago.

14 Q. Okay. Is there any amount of  
15 classes that you believe Peloton is permitted to  
16 take down, or you believe that the statements  
17 that you saw and heard from people meant that  
18 Peloton could never take down a single class  
19 from the Peloton library?

20 A. I -- from what I understand and  
21 from what I've heard and what I believe, I did  
22 not think that Peloton could or would take  
23 classes down.

24 Q. Okay. At all, under any

1       circumstance; correct?

2               A.       I was never aware that they could  
3       or were going to. Is that what you're asking  
4       me?

5               Q.       No, I -- I understand what you're  
6       saying. I'm asking you something different. So  
7       you -- you believe that Peloton had promised to  
8       you that no classes would ever be taken down; is  
9       that correct?

10              A.       Yes, that is correct.

11              Q.       Okay. Not even one; correct?

12              A.       Unless maybe there was some  
13       reason why they would have had to take it down.  
14       Like, maybe, like, one of the coaches got wild  
15       and decided to, like, flash the studio. I don't  
16       know. Maybe they'd take it down.

17                      But in reality, like, what would  
18       be the other reasons for them taking it down? I  
19       know there were some explicit rides. I don't  
20       know if there's a reason why they, you know -- I  
21       know from hearing some of the recent classes,  
22       like, there are still some cuss words and things  
23       like that. So I don't think that's a reason  
24       why, that the class was taken down.

1 But they never mentioned that  
2 they would be taking classes down.

3 Q. What about if licenses for music  
4 changed? That could be a reason they might have  
5 to take down classes; right?

6 MR. ZIGLER: Lack of foundation.  
7 Go ahead if you can.

8 THE WITNESS: I assume -- I  
9 assumed because of the other issue that  
10 Peloton had with copyright to music was  
11 one of the reasons why music and classes  
12 came down.

13 But, again, that is not my  
14 problem as a person who is purchasing  
15 product from Peloton. That's not my  
16 fault --

17 BY MR. FELDMAN:

18 Q. What about server space? What  
19 about that Peloton has got a growing library and  
20 all of a sudden fast forward five years from now  
21 they've got 270,000 classes, you know, taking up  
22 server space. It's -- still your view is, they  
23 can't take anything down; right? They promised  
24 you they wouldn't; is that correct?

1 MR. ZIGLER: Can you stop  
2 interrupting the witness, please?

3 Go ahead.

4 THE WITNESS: Do we think that  
5 maybe Peloton could have just let people  
6 know that they were going to take down  
7 these classes?

8 BY MR. FELDMAN:

9 Q. The terms of service do, but we  
10 don't have time to go through them.

11 A. Okay.

12 Q. But the terms of service  
13 specifically say that Peloton has the right to  
14 remove classes at any time at its sole  
15 discretion.

16 Are you aware of that?

17 A. No, I'm surprised we didn't go  
18 over that.

19 Q. Okay. If -- so you -- I'll  
20 represent to you that you did agree to terms of  
21 service that did include the statement that  
22 Peloton could remove classes at any time at its  
23 sole discretion.

24 Does that change your opinion of

1 this case now?

2 (Simultaneous cross-talk.)

3 MR. ZIGLER: Objection --

4 THE WITNESS: No, you would have  
5 to show it to me, because I don't  
6 recall.

7 BY MR. FELDMAN:

8 Q. Okay. Let's put it up.

9 A. I don't recall ever reading it,  
10 is what I'm saying. I --

11 Q. Okay. So --

12 A. I don't recall answering. I  
13 don't remember -- I don't remember anything. I  
14 don't remember ever seeing that -- that it --  
15 that Peloton wrote in their, like, whole  
16 legality of -- of what you're showing me, these  
17 documents, that it was going to say that they  
18 could take classes down. I don't remember  
19 reading that ever.

20 Q. Okay. So would your -- would  
21 your view in this case change if you saw that  
22 you did click "agree to the terms of service"  
23 and that the terms of service did say Peloton  
24 could remove content at any time at its sole

## C E R T I F I C A T I O N

I hereby certify that I have read  
the foregoing transcript of my deposition  
testimony, and that my answers to the questions  
propounded, with the attached corrections or  
changes, if any, are true and correct.

-----  
MEAGAN SULLIVAN



1 - - -

2 E R R A T A S H E E T

3 - - -

4

5 PAGE LINE CHANGE

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## 1 CERTIFICATE OF SHORTHAND REPORTER

2  
3 I, Gail Inghram Verbano,  
4 Registered Diplomate Reporter, Certified  
5 Realtime Reporter, Certified Shorthand Reporter  
6 (CA) and Notary Public, the officer before whom  
7 the foregoing proceedings were taken, do hereby  
8 certify that the foregoing transcript is a true  
9 and correct record of the proceedings; that said  
10 proceedings were taken by me stenographically  
11 and thereafter reduced to typewriting under my  
12 supervision; and that I am neither counsel for,  
13 related to, nor employed by any of the parties  
14 to this case and have no interest, financial or  
15 otherwise, in its outcome.

16  
17  
18 

19 Gail Inghram Verbano, CSR, RDR, CRR  
20 CA-CSR No. 8635  
21  
22  
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24